Award No. 12179
Docket No. CL-11991

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Agreement and Memoranda in connection therewith when, effective January 1, 1959, it removed the work of property accounting, and the work of preparing the statement of monthly investment and depreciation, for the Greenbrier properties from employes covered by the Agreement and assigned it to persons not covered by the Agreement.

(b) Mr. James L. Holzhauer, Jr., the regularly assigned occupant of Property Accountant No. A-6 in the Office of General Auditor-Property Accounts, and his substitutes or successors, if any, shall now be additionally compensated one day's pay each workday at the rate of Position A-6; and Mr. F. B. Reynolds, the regularly assigned incumbent of Position of Accountant No. A-253 in the Office of Auditor of Expenditures, and his substitutes or successors, if any, shall be additionally compensated for three hours each month at the pro rata rate of Position No. A-253. Claim to be effective January 1, 1959, and each day thereafter that the violation is permitted to exist.

EMPLOYES' STATEMENT OF FACTS:

1. In the year 1910, White Sulphur Springs, Incorporated, a wholly-owned subsidiary of the Carrier, acquired the property known as The Greenbrier Hotel located at White Sulphur Springs, West Virginia. The subsidiary was dissolved in 1942 when the property was acquired by the United States Government for use as a military hospital. The property was again acquired by the Carrier from the War Assets Administration in 1946 and subsequently leased to another wholly-owned and controlled subsidiary, White Sulphur Springs Company. The arrangement was that the subsidiary should pay to the Carrier an annual rental amounting to 75% of the operating profit, with

8. Award 9207, involving another wholly-owned C&O subsidiary, supports the Carrier's position.

9. Therefore, the claim should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose when the Carrier on January 1, 1959 deeded to the White Sulphur Springs Company a wholly-owned affiliate, the Greenbrier Hotel property. Prior to this time the Carrier leased the hotel to the White Sulphur Springs Company and performed some accounting work for the hotel. Thus, from 1946 to January 1, 1959, the Carrier, as owner of the hotel properties carried on its books and clerical forces in the office of General Auditor property Accounts the property investment and depreciation records for the hotel properties. After the transfer of the property in 1959 the hotel personnel undertook the keeping of the records.

The Claimants contend that the parties signed an agreement on March 1, 1957, supplementing the overall agreement of the parties which granted the above work to the Claimants and stated in paragraph 31 of the agreement.

> "It is understood that all work referred to or involved in this Agreement, including all supervision thereof, shall be in and under the Chesapeake District Clerical Agreement, and shall be performed by employes subject thereto in accordance with the terms of that Agreement and memoranda in connection therewith, unless and until otherwise agreed in writing between the duly authorized representatives of The Chesapeake and Ohio Railway Company, Chesapeake District, Management and the General Chairman of the Chesapeake and Ohio System Board of Adjustment on the Chesapeake District."

In addition Rule 1—Scope of employment, Rule 1 (b), Rule 2, 3, Seniority, Rule 4, Promotion, Assignments, and Displacements and Rule 65, Date Effective and Changes.

Thus, the work in dispute was clearly contracted to the employes in the Office of Valuation Engineer and Auditor of Expenditures and could not be removed until so agreed in writing by the Carrier and Organization.

The Carrier contends that: The current agreements only apply while the hotel property remained in the Carrier Account. Award 4353 of this Division states that it is not necessary to negotiate the abolishment or establishment of position when the work is not necessary to the Carrier's operation.

The question to be decided is whether the Carrier, in view of the Agreements, can relinquish the work to a wholly owned corporate affiliate engaged in the hotel business?

We are of the opinion that Award 4353 of this Division is controlling herein.

> ". . . The Scope and Seniority rules of the Agreement are not static in the sense that they attach to work and positions in being at the time of the signing of the Collective Bargaining Agreement and to nothing more nor less. On the other hand, they are ambulatory in the sense that they follow along with the operations of Carrier and attach and detach themselves to work and positions which are of a class defined therein as the operations of the Carrier require and thus with increasing needs, the amount of both covered work and positions expands and with decreasing needs contracts. . . ."

In the facts herein when the Carrier deeded the hotel property to the separate Corporation, that Corporation assumed responsibility for its own accounting work. The work was no longer the function of the Carrier. Did the agreement of March 1, 1957, prevent the Carrier from transferring the accounting work to the hotel Corporation? We are of the opinion that it did not. We must recognize the right of the hotel Corporation to do its own accounting work if we accept the fiction of the affiliate Corporation as a separate form of business organization. The hotel decided to do its own accounting, which it could, and did do, in spite of the fact that its directors have dual roles with the Carrier and hotel Corporation.

We are further of the opinion that the general agreement and Agreement of 1957 both applied to Carrier and Organization, while the Carrier was engaged in the railroad business. Any other interpretation would place the test of jurisdiction on stock ownership and control rather than employer-employe relationship.

Thus, the theory enunciated in Award 4353 applies here, where the Carrier transfers the work to, or another Corporation assumes work no longer to be undertaken by the Carrier as a railroad function. Then the work may be transferred without violation of Rules. Under the facts of Award 4353 another Carrier took the work "home," in order to perform its own clerical work. The Carrier transferring the work was not in violation of Rules, as the work was not necessary to its own operation. However, it could not transfer work necessary to its own operation and not be in violation of current Rules.

Under the facts before us, the Carrier is not in violation of Rules when it transfers work not necessary to its own operation, but the operation of a separate Corporation engaged in the hotel business.

Thus, the claim of the Employes cannot be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February 1964.